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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/020,185  | 12/18/2001  | Terry X. Rajasenan   | TR-1                | 8031             |
| 28230   | 7590        | 02/27/2006           | EXAMINER            |                  |
| H JAY SPIEGEL<br>P.O. BOX 444<br>MOUNT VERNON, VA 22121 |             |                      | KOPPIKAR, VIVEK D   |                  |
|   |             |                      | ART UNIT            | PAPER NUMBER     |
|   |             |                      | 3626                |                  |

DATE MAILED: 02/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                                      |   |  |
|------------------------------|--------------------------------------|---|--|
| <b>Office Action Summary</b> | <b>Application No.</b><br>10/020,185 | <b>Applicant(s)</b><br>RAJASENAN ET AL. |  |
|                              | <b>Examiner</b><br>Vivek D. Koppikar | <b>Art Unit</b><br>3626                 |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12/18/01.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 2/22/02 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

**DETAILED ACTION**

***Status of the Application***

1. Claims 1-18 have been examined in this application. This communication is the first action on the merits. As of the date of this communication, no Information Disclosure Statement (IDS) statement has been for this application.

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent Number 6,587,831 to O'Brien.

(A) As per claim 1, O'Brien teaches a method of conducting a labor arbitrage between a plurality of facilities (O'Brien: Abstract), including the steps of:

a) creating an electronic business community made up of said plurality of health care facilities, including the steps of: i) compiling information concerning all employees of each health care facility (O'Brien: Col. 23, Ln. 23-38), and

ii) supplying said information to an exchange hub (O'Brien: Col. 3, Ln. 23-38); b) assessing labor resources of each facility (O'Brien: Col. 23, Ln. 23-38), including the steps of:

i) assessing labor assets (O'Brien: Col. 3, Ln. 62-Col. 4, Ln. 9); and

- ii) determining labor requirements (O'Brien: Col. 3, Ln. 62-Col. 4, Ln. 9);
- c) deriving put and call option orders for each health care facility requiring same (O'Brien: Col. 4, Ln. 30-49);
- d) calculating value of option orders including determination of cost and value (O'Brien: Col. 7, Ln. 53-Col. 8, Ln. 37);
- e) sending option orders to said exchange hub (O'Brien: Col. 7, Ln. 53-Col. 8, Ln. 37);
- f) negotiating at least one deal between at least two of said health care facilities (O'Brien: Col. 7, Ln. 53-Col. 8, Ln. 37); and
- g) closing said at least one deal (O'Brien: Col. 6, Ln. 13-16).

O'Brien does not teach that this system is used by a health care facility, however, the examiner takes Official Notice that at the time of the invention, it would have been obvious for one of ordinary skill in the art to have used the system of O'Brien in a health care facility with the motivation of efficiently being able to utilize and manage labor resources.

(B) As per claim 2, in O'Brien the compiling step includes the step of inputting information concerning employee names, identification codes, job descriptions, typical work hours, flexibility of work hours and dates of availability (O'Brien: Col. 3, Ln. 23-39).

(C) As per claim 3, in O'Brien the compiling step further includes the step of creating a master schedule indicating the availability of each employee (O'Brien: Col. 6, Ln. 18-19).

(D) As per claim 4, in O'Brien the assessing step includes the step of comparing a staffing plan related to actual staff level with a listing of actual staffing needs (O'Brien: Col. 6, Ln. 18-51).

(E) As per claim 5, in O'Brien the step of assessing said actual staffing needs in the absence of use of overtime pay and temporary employment agencies (O'Brien: Col. 6, Ln. 18-51).

(F) As per claim 6, in O'Brien the deriving step includes the step of deriving put orders by looking for employees whose job and shift are in excess of a desired quality level for a health care facility (O'Brien: Col. 7, Ln. 25-30).

(G) As per claim 7, the deriving step includes the step of deriving call orders by looking through jobs at a shift and discerning where a current staffing level is below an overtime level for a health care facility (O'Brien: Col. 4, Ln. 30-39).

(H) As per claim 8, in O'Brien the calculating step includes:

a) prioritizing size of return, namely, amount of monetary savings (O'Brien: Col. 7, Ln. 59-Col. 8, Ln. 16); and

b) effort of change based upon degree of employee flexibility (O'Brien: Col. 7, Ln. 59-Col. 8, Ln. 16).

(I) As per claim 9, in O'Brien the calculating step regarding put option orders includes the step of calculating cost of overstaffing resulting when more employees are staffed, for a given job shift, than are needed (O'Brien: Col. 6, Ln. 44-47).

(J) As per claim 10, in O'Brien the calculating step regarding call option orders includes the step of calculating cost of overtime pay resulting where fewer employees are staffed, for a given job shift, than are needed (O'Brien: Col. 6, Ln. 44-47).

(K) As per claim 11, in O'Brien the negotiating step includes the step of creating a table of exchange values for all potential deals (O'Brien: Col. 9, Ln. 1-4).

(L) As per claims 12-18, the claims repeat features previously addressed in the rejection of claims 1-11 and are rejected on the same basis.

### ***Conclusion***

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

US Patent Number 5,343,388 to Wedelin teaches a method and apparatus for optimally allocating resources.

5. Any inquire concerning this communication or earlier communications from the examiner should be directed to Vivek Koppikar, whose telephone number is (571) 272-5109. The examiner can normally be reached from Monday to Friday between 8 AM and 4:30 PM.

If any attempt to reach the examiner by telephone is unsuccessful, the examiner's supervisor, Joseph Thomas, can be reached at (571) 272-6776. The fax telephone number for this group is (703) 872-9326 (for official communications including After Final communications labeled "Box AF").

Another resource that is available to applicants is the Patent Application Information Retrieval (PAIR). Information regarding the status of an application can be obtained from the (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAX. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, please feel free to contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Sincerely,

  
Vivek Koppikar

2/7/2006

  
C. LUKE GILLIGAN  
PATENT EXAMINER